IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

R.F.A. No. 187 of 1997.
Cross Objections No. 344 of 1997.

Reserved on : 10.1.2007.
Date of Decision: .1. 2007.

State of H.P. and another. Appellants.

Versus

East India Hotels Limited. Respondents.

Coram

Hon'ble Mr. Justice S.S.Thakur, J.

Whether approved for reporting[1]?

For the Appellants : Mr. M. S. Chandel, Advocate General with Mr. J.S. Guleria, Law Officer.

For the respondent : Mr. K.D. Sood, Advocate.

Surinder Singh, J.

This is an appeal under Section 54 of the Land Acquisition Act filed by the appellants against the award passed by District Judge, Shimla in Land Reference No. 7-S/4 of 1981 dated January 3, 1996. The respondent Company has also filed the cross objections No. 344 of 1997 with respect to its inadequacy. This judgment will dispose of the present appeal as well as the cross-objections.

Briefly stated, the facts of the case are that the land of the respondent was acquired by the State of Himachal Pradesh for re-widening of Kalka Shimla Road (N.H.) at Km. 146-147 on the Cart Road near Chaura Maidan, Shimla, on Kalka Shimla road, vide

[1] Whether reporters of the Local papers are allowed to see the judgment?

notification dated 5-6-1976 issued under Section 4 of the Land Acquisition Act by the Land Acquisition Collector, after completing the codel formalities, awarded the compensation to the respondent at the rate of rupees 21/- per sq. yard for the land. Rupees 2705/- as cost of *twenty* non-fruit bearing trees, Rs. 6651.15, solatium @ 15%. In total, rupees 41, 636/- were awarded as compensation for acquisition of the land and trees, on 3-7-1979.

The respondent did not feel satisfied, with the said award passed by the Collector, thus moved an application for making a reference to the District Judge under Section 18 of the Land Acquisition Act, hereinafter to be referred as the 'Act'. After considering the matter and on the basis of evidence adduced before him, the District Judge enhanced the amount and awarded the compensation on 3-1-1996 for the land at the rate of Rs. 100/- per sq. yard thus found the respondent entitled to the following enhanced compensation:

1. Total area of land: = 1982.6 sq. yard.
2. Compensation awarded by LAC: Rs. 41, 636.00
3. Compensation awarded by the District Judge: :Rs. 1,98,206.00
4. Net amount of enhanced Compensation. :Rs. 1,56, 570.00

The District Judge had also awarded solatium @ 30% on the enhanced amount and interest @ 12% on the said amount of compensation under Section 23 (1-A) of the Act w.e.f. 2-4-1976 to 3-7-1979. Further the respondent was held entitled to interest @ 4% under Section 28 of the Act w.e.f. 3-7-1979 to 30-4-1982 and

thereafter @ 9% for one year (w.e.f. 30-4-1982 to 30-4-83) and 15% thereafter till the amount aforesaid is deposited etc.

The appellant-State felt aggrieved by the impugned award and filed the present appeal on the ground that the District Judge had misinterpreted and misunderstood the provisions of law, the sale deeds produced by the respondent were wrongly relied upon for the enhancement of compensation, further that the land acquired was of no potentiality to the respondent as it was touching the edge of the road. Therefore, no construction can be raised by the respondent in view of the "H. P. Road Side Control Act, 1968" and that the additional compensation and the interest u/s 23 (1-A) and Section 28, respectively were wrongly awarded.

The respondent in Cross Objections claimed only the compensation at the rate of Rs. 200/- per sq. yds on account of the location and potentiality of the acquired land due to its proximity to Chaura Maidan and its location at an important juncture at Tunnel No. 103 near Shimla Railway Station.

Shri M.S. Chandel, learned Advocate General has forcefully argued that the District Judge has wrongly relied upon the sale deeds of quite different and distant areas and the interest u/s 23 (2),23-1A & 24 of the Act was awarded contrary to the provisions of the Act as amended in the year 1984 since the amendments were not to apply retrospectively, therefore, the relevant provisions were wrongly interpreted and applied thus the appeal deserved to be accepted.

On the other hand, Shri K.D. Sood, Advocate, learned counsel for the respondent urged that the District Judge has

ignored the fact of potentiality and location of the land which is a commercial area, therefore, submitted that the compensation deserved to be enhanced.

I have given my thoughtful consideration to the rival contentions of the parties and have judiciously scanned the evidence on record.

First of all, I shall take up a very simple but an interesting question raised by learned Advocate General regarding the effect of amending Act 1984 on the solatium, additional compensation and interest u/s 34 of the Act.

The matter is no more res integra in view of the verdict of the Apex Court in ***Kashiben Bhikabai and others versus Special Land Acquisition Officer and another : (2002) 2 SCC 605*** relying upon the Constitution Bench in ***Raghuvir Singh's case (1989) 2 SCC 754*** , the Supreme Court has held that the claimants would be entitled to the statutory solatium at the rate of 30% of the market value where the order of the reference Court is made after coming into force of the amendment introduced by amending Act 68 of 1984. Further, relying upon ***Union of India – v- Filip Tiago De Gama: 1990 (1) SCC 277*** it was also held in the same case that additional compensation under Section 23 (1A) of the Act would not be available to a claimant in which the acquisition proceedings commenced and award was made by the Court prior to 30.4.1982. In other words, when the Collector had made the award before the aforesaid cut off date, then the additional amount under Section 23 (1A) of the Act cannot be awarded. Thus, the pendency of acquisition proceedings on or

before 30.4.1982 before the Collector is essential for attracting the benefit of Section 23 (1A) of the Act. Further, it has been held in ***Land Acquisition Officer Miryalguda –v- Lavoori Deshya and others, AIR 2003 NOC 132 (A.P.)*** that the interest payable on compensation u/s 34 of the Act as amended can only be awarded w.e.f. 30.4.1982 and nor prior to it. Therefore, the net conclusion is that the District Judge has rightly awarded the solatium at the rate of 30% u/s 23 (2) and the interest u/s 34 of the Act as aforesaid but he was not at all competent to award the additional compensation under Section 23 (1A) as the award was passed by the Collector prior to 30.4.1982. .

The next question is regarding the adequacy of the compensation. It is by now well established that the value to be determined is the market value at “the date of publication of the notification under Section 4(1)”. Therefore, the date of the sale deed to be relied upon ought to be about this time, bearing in mind the guiding principles enumerated in Section 23 of the Act for awarding the just compensation. The best way to determine the same land out of lands in the vicinity, various factors are to be taken into consideration, namely, the size and the shape of the land, the locality and its situation, the vicinity of the property, the user, the potential value and the rise or depression and the value of the land in the locality. There must be evidence on record from which the Court is in a position to compare the nature, situation and potentiality of the land acquired with those of the lands covered in comparable sales or even under the earlier awards. In other words, for the determination of the market value, examples

of contemporaneous transactions in respect of the land having similar advantages have the evidentiary value.

In the instant case, the land in question is on the edge of the National High way where the construction activity of any kind is not permissible up to 5 meters from the edge of the road under the 'H. P. Roadside Control Act'. According to PW1 Shri K.N. Chaudhary, the land is about 100 yds in length with a varied width ranging from 10 to 15 yards.

The sale deed dated 23-4-74 relied upon by the respondent Exhibit P2=Ext.PW4/A is with respect to small area, i.e, 85.6 sq. yards which is about half km. away from the land in question, i.e, between Victory Tunnel and the Bus Stand, Shimla located above the National Highway. This land was sold by Shri Ari Daman Nath (PW2) for a consideration of rupees 12,500/- in the year 1974 to Smt. Santosh Sood wife of Shri Vishwa Nath (PW4). This land is stated to be centrally located and better than the land in question as stated by PW2 aforesaid. PW4 had constructed a house there upon whereas land in question cannot be put to such a use because its width is uneven and abuts the National Highway where construction activity is not allowed up to a certain limit. However, the value of the land sold vide Ex. P2 = PW4/A comes to about Rs. 146/- per sq. yards whereas, the another sale deed dated 19.4.74 relied upon by the respondent is Ex. PX whereby Shri Yogendra Chander (PW3) had sold his 221 sq. yards below Tara Hall School below the Cart Road to one Shri Maheshwar Dutt for Rs. 24000/-, i.e, Rs. 108/- (approx) per sq, yard. According to PW3, the land is ideally located for construction of residential

houses. The land is situated at a distance of about one km. from the acquired land, though both the sale instances are bonafide. As already said, the land in reference petition cannot be put to the similar use as that of the land referred in aforesaid deeds.

In fact, in town areas, however, it is difficult to arrive at the market value by making adjustments before applying the value obtained in a sale or some other land not exactly similar, because value differs greatly owing to difference in position. Any instance of sale of the different locality or an area with different aspects ought to be ruled out. In the instant case the sales had taken place within few years of the acquisition, i.e, about 2 year before the notification under Section 4 of the Act. As the land in sale deed Ext. P2= PW4/A is about half k.m. from the acquired land and is situated on upper side of the National Highway, whereas, the land in Exhibit PW4/A is located at a different site in different direction and is one km away. Therefore, by balancing the advantages and disadvantages and also the location of the acquired area, after allowing reasonable deductions, the value of the land in dispute was reasonably assessed at Rs.100/- per sq. yard, at the relevant time by the District Judge . However, the average method adopted by him was not correct. The other sale deeds Ex. PY and Ex. PZ placed on record by the respondent are of the year 1980 after passing the award by the Collector and much after the acquisition and are of the area like Chaura Maidan and Boileauganj which have more potentiality and are commercially viable than the present one. Therefore these sale instances cannot be applied to a case where the notification under Section 4 of the Act was issued

on 2-4-1976. Therefore, the compensation awarded by the District Judge @ 100/- per sq. yard is quite reasonable thus, there is no ground to reduce or enhance the compensation. As such, the appeal to this extent and cross objections in totality deserves to be dismissed.

Now I proceed to take up the simple but an interesting question raised by the appellant in respect of awarding the solatium, additional compensation and statutory interest under Section 34 of the Act as awarded by the District Judge in view of the Land Acquisition (Amendment) Act, 1984, hereinafter to be called as the “amending act”.

As already said, the Land Acquisition Collector had passed the award on 3.7.1979, i.e, prior to the amending act and thereafter, the reference petition was decided by the District Judge by his award on 3-1-1996. The District Judge held the respondents entitled to the amount of compensation in his concluding paragraph as stated supra.

Accordingly, the award passed by the District Judge is required to be modified to the above extent and is ordered accordingly.

In result the appeal filed by the State is partly allowed and the award passed by the District Judge stands modified to the above extent whereas the cross objections are dismissed.

Parties are left to bear their own costs.

(Surinder Singh)
Judge.

January 10, 2007.
(BM)